IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1149 OF 2006.
IN
CRIMINAL APPEAL NO. 587 OF 2006.

Sarvar Ayub Habid Khan. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri Nitin Sejpal and Ms.Pooja Bhojane for the Applicant.

Shri S.R.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S.OKA, J.

DATE ON WHICH
ARGUMENT HEARD : 15th December, 2006.

DATE ON WHICH
ORDER IS PASSED: 21st December, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Applicant and the learned A.P.P. for the State.

2. The Applicant is the Accused No.1 who has been convicted for offence punishable under section 304 (part I) read with section 34 of the Indian Penal Code. The maximum substantive sentence is of 7 years R.I. and the fine amount is Rs.2000/-. In default of payment of fine, he has been sentenced to undergo simple imprisonment for three months. I have perused the impugned judgment and order and the notes of evidence.

I have also perused the record and proceedings. The learned Advocate for the Applicant submitted that the Complainant P.W.1 Mohammed who was allegedly present at the time of the incident had given the history of injuries sustained by his father (the deceased) as caused in an accident. He submitted that at the earliest point of time, an entry was made in the record showing that the death was accidental. He invited my attention to the evidence of the Investigating officer.

3. The learned A.P.P. submitted that no case is made out for grant of bail as offence under section 304 (part I) was established against the Applicant.

4. A perusal of the cross-examination of P.W.10 shows that an EPR entry dated 4th January 2005 was made in respect of accidental death caused by a vehicle accident. It appears that in fact such an entry was made and was erased as has been admitted by P.W.11 who investigated the crime. In the cross-examination of P.W.10, (P.S.I attached to Sewree Police Station), the original EPR register and Entry No.97 of 2005 dated 4th January 2005 was shown to him. He admitted that an entry was made therein showing that the injured person was knocked down by an unknown trailer. He stated that the entry was erased. He admitted that on 1st December 2005 he noticed that the original entry was erased or

cancelled. He, however, did not record statement of the Constable who was maintaining the EPR register. He admitted in paragraph No.8 that when he visited the hospital on 4th January 2005, he came to know that the deceased and his son (P.W.No.1) were injured in a vehicle accident. He admitted that in Exh.13 (Inquest Panchanama) it was mentioned that the offence was registered as an accidental death No.1 of 2005 under section 174 of the Code of Civil Procedure, 1973 and accordingly the papers were sent to the Court of the learned Magistrate.

5. P.W.1 (injured witness and the son of the deceased) in his cross-examination admitted that his two statements were recorded by the Police. The first one was in the hospital and the second one was in the Police Station. Though the Advocate for the Accused had called upon the prosecution to produce both the said statements only one statement was produced in the Court.

6. The aforesaid factors create some doubt about the prosecution case. One of the two statements of the Complainant allegedly recorded by the Police was not produced. Moreover the statement of the Constable who made entry in the EPR register was not recorded.

7. The Applicant has already undergone sentence of

more than 1-1/2 years. Considering the peculiar facts mentioned above and considering the fact that the Appeal is not likely to be heard before the remaining period of sentence is over, a case is made out for enlarging the Applicant on bail subject to stringent conditions.

8. Hence the following order is passed:

i) The Applicant shall be enlarged on bail in the sum of Rs.15,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the Applicant will not enter the Districts of Mumbai and Mumbai Suburban till disposal of the Appeal.

iii) The order granting bail will be given effect to only after the Applicant furnishes the complete address of his place of residence where he proposes to reside after being enlarged on bail.

iv) The bail is granted subject to condition that the Applicant will report to the concerned Police Station within whose jurisdiction he will be residing after

being enlarged on bail on every first Saturday of every calender month till disposal of the Appeal.

v) The order granting bail will be given effect to only after the fine amount is deposited by the Applicant.

vi) The Application is disposed of in the above terms.

Judge.